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COMMERCE FOR CARL OBERG; STATE FOR NEA/ARP AND EB

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SUBJECT: KUWAIT TAXATION UPDATE

11. (SBU) SUMMARY AND COMMENT. On May 8, the Council of Ministers adopted a resolution addressing the inconsistently-implemented taxation law on foreign companies operating in Kuwait. The resolution, in vague terms, states that a foreign company's retention of a local agent indicates a taxable presence, but does not address the broader issue of a clear definition of what is (and what is not) taxable. The resolution clearly reflects language prepared by the Kuwait Chamber of Commerce and Industry (KCCI), and appears intended to relieve local agents from receiving tax notices on behalf of their foreign partners. A new tax law has been proposed that would lower rates from 55% to 15%, but the law, even if passed by Amiri decree, would require approval by the Parliament.

12. (SBU) Post believes that the recent Council of Ministers resolution falls short of truly clarifying the issue. It is too early to make any judgments about tax reform, as we have not seen the proposed new tax law. The tax code as currently understood does not clearly define who or what is taxable. This ambiguity continues to lead to U.S. corporate misgivings in contracting or dealing with public entities in Kuwait. Any advocacy on the clarification and improvement of Kuwait's tax code must include clear definitions of who is taxed, what is taxed, how it will be assessed, how to calculate the tax, and how to pay the tax. In addition, all interlocutors agree that the Kuwait Tax Authority is currently limited in its understanding and ability to analyze financial statements to determine tax liability; for this reason, the GOK relies on "deemed taxation," which assumes a different profit margin based on bilateral tax treaties (or lack thereof) with foreign companies' home countries. END SUMMARY AND COMMENT.

13. (SBU) On May 8, the Council of Ministers (CM) adopted a vaguely-worded resolution asking the Finance Ministry to enforce the 1955 Tax Code in a manner which defines a commercial agent in terms consistent with international norms. The presence of a commercial agent would constitute a physical presence, and mean therefore that a foreign company with an agent is subject to tax on its profits. Conversely, the resolution appears to state that foreign companies who are solely importing to Kuwait through distributors do not have a tax liability. This resolution was in response to the continuing problem of foreign companies that have no physical presence in Kuwait, and operate only through local distributors, who have complained after receiving tax bills as though they had physical presences in the country.

14. (SBU) While the resolution appears to somewhat clarify the definition of a taxable presence (ie, having an agent), Post shares the view of U.S. accounting firms that the resolution's language is still vague and appears to only re-emphasize existing provisions exempting Kuwaiti businesses from taxation. The resolution does not clearly address the broader question as to who and what is taxable except in the

case of firms having a "legal and economic influence on the local firm." This definition is broad and poorly defined. Post believes that this could be understood to include any foreign companies even remotely or indirectly selling in Kuwait.

15. (SBU) The resolution clearly reflects language prepared or suggested by the influential Kuwait Chamber of Commerce and Industry (KCCI) and Post's initial read is that this resolution was intended to relieve local companies from receiving tax notices or having to communicate with the Kuwait Tax Authority. In previous years, the tax liability notification was sent to local agents/distributors and not to the foreign principals.

16. (SBU) A new tax law being proposed by the GOK to reduce tax liability rates for foreign companies from 55% to a flat rate of 15% would require approval by the Parliament, due to be elected on June 29. Post is not certain that the new Parliament would vote on this legislation without any consideration for amendment or rejection. The new tax law would not necessarily eliminate tax liability claimed under the previous tax code - there may not be retroactivity to the new tax code, which would eliminate all previous liability or withstanding tax payable.

17. (SBU) Post has learned that corporate legal counsel often adds commercial contract provisions that include requirements that local agents pay any and all fees due to the transaction and contract not specifically dictated in the terms and conditions of the contract. In other words, local companies may need to pay the foreign partner the amount of tax payable under its contractual obligations so that the foreign firm may then pay the tax. The GOK's assumption that local

KUWAIT 00002145 002 OF 002

companies would not be paying some form of tax, in part or in whole, is misplaced.

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